

(2012) 05 PAT CK 0028

In the Patna High Court

Case No : Criminal Miscellaneous No. 20411 of 2007

Shambhu Kumar @ Shambhu Yadav and Others

APPELLANT

Vs

State of Bihar, Devendra Prasad Yadav and Smt. Kumkum
Devi

RESPONDENT

Date of Decision : 11-05-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1), 192, 202, 482
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 147, 323, 34, 354, 406

Citation : (2012) 05 PAT CK 0028

Hon'ble Judges : Ashwani Kumar Singh, J

Bench : Single Bench

Advocate : Arbind Kumar, for the Appellant; Mayanand Jha, Assistant Public Prosecutor for the State, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice Ashwani Kumar Singh

1. Heard Mr Arvind Kumar, learned counsel appearing on behalf of the petitioners and Dr Mayanand Jha, learned A.P.P. appearing on behalf of the State. Though notices were validly served upon the opposite party No 2, who is complainant of the case, inspite of filing the vakalatnama, no one has chosen to appear in Court. The petitioners have come against the order dated 23.12.2005 passed in Complaint Case No 3212C of 2005 by Shri Shobha Kant Mishra, the learned Judicial Magistrate, First Class, Patna by which finding a prima face case to be made out under Sections 448, 323, 354/34 and Section 147 of the Indian Penal Code, he has summoned the petitioners to face trial.

2. The case arises out of a complaint instituted by one Devendra Prasad Yadav (opposite party No 2) on 29.10.2005 regarding an occurrence which is said to have taken place on 23.10.2005 in the Court of learned Chief Judicial Magistrate,

Patna. It is alleged that at about 5 pm on the relevant date, the accused persons entered into his house, abused him, assaulted other inmates of the house and took away cash and other household articles amounting to Rs 40,000/-. They also misbehaved with the lady members of the house. When a shouting was made, they resorted to firing and fled away.

3. The complainant has alleged that the occurrence was witnessed by several persons of the locality. A report was given regarding the incident to the concerned Police Station. Since no First Information Report was registered pursuant to the information given to the police, ultimately a complaint was filed in the Court. After institution of the complaint, the complainant was examined on oath. Three witnesses, namely, Smt Shanti Devi, Ram Lal Yadav and Sunil Kumar Suman were examined in course of enquiry u/s 202 of Criminal Procedure Code and after conducting enquiry finding a prima facie case to be made out, the impugned order taking cognizance of the offence and summoning the petitioners was passed by the learned Magistrate concerned.

4. It is submitted on behalf of petitioners that the present complaint is manifestly attended with mala fide. As a matter of fact, the complainant has filed this case in retaliation to a case which was instituted earlier by Sharmila Devi daughter of petitioner nos. 2 and 4 and sister of petitioner nos.1, 3, 5 and 6. She had instituted the complaint being Complaint Case No C/1-1196 of 2005 in the Court of learned Chief Judicial Magistrate, Jamshedpur on 29.08.2005. The complainant of the present case is husband of said Sharmila Devi.

5. In her complaint dated 29.8.2005 said Sharmila Devi had alleged that her marriage was solemnized with the complainant on 22.05.2002 according to the Hindu rites and customs at village - Sushil Nagar, Police Station - Singhaul, District - Begusarai. After marriage, she was being subjected to cruelty in various ways by her husband and in-laws for non-fulfilment of demand of dowry. It is also alleged by her that since the time of marriage, the accused persons were not satisfied with the articles which the complainant had brought from her father's house and they always insisted the complainant to bring Rs 50,000/- for purchasing a motorcycle for her husband. They also coerced to put pressure upon her father to transfer a piece of land at Sushil Nagar in favour of her husband by executing a registered deed of conveyance. When Sharmila Devi refused to oblige the demand of the accused persons, they subjected her to cruelty both mentally and physically. Sharmila Devi ultimately came to her parental home and lodged the aforesaid complaint case against the complainant of the present case and others.

6. The learned Chief Judicial Magistrate, Jamshedpur vide order dated 29.08.2005 made over the complainant to the Court of learned Sub.Divisional Judicial Magistrate, Jamshedpur for enquiry and trial u/s 192 of the Criminal Procedure Code. Pursuant to examination of the complainant on oath and recording the statement of the witnesses examined in course of enquiry, a prima facie case was found to be made out under Sections 498A, 494, 406/34 of the

Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act against the complainant and six others and they were summoned to face trial. It is to be noted here that since the complainant of the present case had already married another lady and, therefore, cognizance was also taken u/s 494 of Indian Penal Code by order dated 18.1.2006.

7. Learned counsel for the petitioners submits that Sharmila Devi, first wife of the complainant, had also filed an application for maintenance against the complainant which was numbered as Miscellaneous Case No 98 of 2006 and is pending in the Court of Principal Judge, Family Court, Jamshedpur. He submits that the present complaint has been filed by the complainant just in order to blackmail and coerce the petitioners so that they may not pursue their case at Jamshedpur. He pointed out that from a bare perusal of the complaint, it would transpire that the accused persons are resident of Jamshedpur within the State of Jharkhand. It is highly improbable that they would come to Patna, enter into the house of the complainant, abuse female members and take away cash and other household articles from there. He also pointed out that it is beyond imagination that father-in-law, mother-in-law, brothers-in-law and married sister-in-law would have joined together in committing the offence of the nature complained of.

8. It is to be noted that inspite of repeated service of notice, the complainant had chosen not to appear before the Court when the matter has been taken up.

9. Learned counsel for the State submits that though on the basis of records, it appears that the present case has been lodged in retaliation to the case lodged against the complainant and his family members but still there is evidence on record on the basis of which the learned Magistrate has found a prima facie case to be made out and, as such, the order impugned cannot be termed to be an illegal order. He may be right in his submission but when the matter is being taken up by this Court in exercise of powers conferred u/s 482 of Criminal Procedure Code, it is also to be seen as to whether the prosecution lodged is malicious in nature and has been brought in order to coerce the accused persons to settle scores. The Supreme Court in a number of cases, laid down the scope and ambit of the High Court's power u/s 482 of the Code of Criminal Procedure. In this regard, I may place my reliance upon a judgment of the Apex Court in the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, . I usefully quote paragraph- 102 of the said judgment which reads as under:

102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers u/s 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently

channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers u/s 156 (1) of the Code except under and an order of a Magistrate within the purview of Section 155 (2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155 (2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

10. I am conscious of the fact that the inherent powers u/s 482 of the Code of Criminal Procedure though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by tests specifically laid down in the Section itself. The authority of the court exists for advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, the court would not hesitate in preventing injustice by invoking inherent powers. In terms of section 483 of the Code of Criminal Procedure, such is a duty cast upon the court in order to maintain purity in administration of justice.

11. On going through the evidence on record, I find that there is no reasonable explanation as to why the occurrence which is alleged to have taken place on 23.10.2005, the present complaint was instituted after six days that is on 29.10.2005, though a vague averment is made that the matter was reported to

police but no first information report was instituted.

12. On the basis of the discussions made hereinabove, it appears that the allegations made in the complaint are absurd and inherently improbable. The complaint seems to have been maliciously instituted with ulterior motives for wreaking vengeance on the accused and with a view to spite them due to private and personal grudge. I find the present case comes within category (5) and (7) of the Bhajan Lal's case (supra). In the result, this application stands allowed and the order dated 23.12.2005 passed in Complaint Case No 3212C of 2005 by Shri Shobha Kant Mishra, the learned Judicial Magistrate, First Class, Patna is hereby quashed.